Filed 11/23/15 Castro v. JPMorgan Chase Bank

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

SILVIA CASTRO, Plaintiff and Appellant, v. JPMORGAN CHASE BANK, N.A. et al., Defendants and Respondents.	E061229 (Super.Ct.No. MCC1300533) OPINION

APPEAL from the Superior Court of Riverside County. Gloria Trask, Judge. Affirmed.

Law Office of C.H. Grossman and Chaka Grossman for Plaintiff and Appellant.

AlvaradoSmith, S. Christopher Yoo and Lashon Harris for Defendants and Respondents.

Plaintiff and appellant Silvia Castro took out a loan to purchase a home. According to the allegations of the operative first amended complaint, she is not in default on the loan, and no foreclosure proceedings have been instituted. Nevertheless, plaintiff brought suit against defendants and respondents JPMorgan Chase Bank, N.A.

(Chase) and Mortgage Electronic Registration Systems, Inc. (MERS and, collectively with Chase, defendants), alleging various causes of action commonly seen in the foreclosure context. Plaintiff appeals from the judgment entered following defendants' successful demurrer, which the trial court sustained without leave to amend. We affirm.

I. FACTS AND PROCEDURAL BACKGROUND[1]

In December 2002, plaintiff took out a loan in the amount of $180,500, secured by a deed of trust, to purchase a property in Temecula, California. According to the allegations of her complaint—initially filed on April 17, 2013, and amended on August 6, 2013—she "is not in default on her loan and is not in foreclosure." (Boldface and underlining omitted.)

The first amended complaint asserts 9 purported causes of action: (1) intentional misrepresentation; (2) fraud in the inducement; (3) violation of Business and Professions Code section 17200 et seq.; (4) violation of the Homeowner's Bill of Rights; (5) slander of title; (6) quiet title; (7) violation of Business and Professions Code section 17530; (8) cancellation of written instruments; and (9) concealment. The self-described gravamen of the first amended complaint is that Chase—though it is the "Servicer of Plaintiff's loan"—does not in fact own a beneficial interest in the mortgage, due to purported faults in the chain of title. Specifically, plaintiff alleges that she contacted the originator of her loan, Aegis Mortgage Corporation (Aegis) in 2002, and learned that her

[1] A comprehensive factual and procedural history is unnecessary for the disposition of this appeal. In this section, we summarize those matters directly relevant to our analysis, or helpful as context. Additional factual details will be discussed in later sections, as necessary to address plaintiff's claims of error.

loan had been sold to Fannie Mae. She concludes from this circumstance that documents assigning the beneficial interest in the loan from Aegis to Chase must be fraudulent and demonstrate an "attempt to steal rights to Plaintiff's home."

Plaintiff prays for relief in the form of, among other things, disgorgement of all money she has previously paid on the mortgage, various other forms of monetary damages, an order declaring the deed of trust void, an order quieting title to the property in her name, and her attorney fees and costs of suit.

Defendants filed their demurrer to the first amended complaint on February 27, 2014. On March 25, 2014, the trial court issued a minute order sustaining the demurrer without leave to amend. A formal written order to that effect was entered on April 30, 2014.

II. DISCUSSION

A. Standard of Review.

A demurrer should be sustained when "[t]he pleading does not state facts sufficient to constitute a cause of action." (Code Civ. Proc., § 430.10, subd. (e).)

"We independently review the superior court's ruling on a demurrer and determine de novo whether the complaint alleges facts sufficient to state a cause of action or discloses a complete defense. [Citations.] We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken. [Citations.] We liberally construe the pleading with a view to substantial justice between the parties. [Citations.]" (*Regents of University of California v. Superior Court* (2013) 220 Cal.App.4th 549, 558.)

"'If we determine the facts as pleaded do not state a cause of action, we then consider whether the court abused its discretion in denying leave to amend the complaint. [Citation.] It is an abuse of discretion for the trial court to sustain a demurrer without leave to amend if the plaintiff demonstrates a reasonable possibility that the defect can be cured by amendment. [Citation.]' [Citation.]" (*Bank of America, N.A. v. Mitchell* (2012) 204 Cal.App.4th 1199, 1204 (*Bank of America*).) However, "'such a showing can be made for the first time to the reviewing court [citation] . . . .' [Citation.]" (*San Diego City Firefighters, Local 145 v. Board of Administration etc.* (2012) 206 Cal.App.4th 594, 606.) "Whether a plaintiff will be able to prove its allegations is not relevant. [Citation.]" (*Chavez v. Indymac Mortgage Services* (2013) 219 Cal.App.4th 1052, 1057.)

B. Analysis.

1. Plaintiff Lacks Standing to Bring Claims Based on Purported Defects in Chain of Title of Mortgage.

Plaintiff's asserted causes of action all rest on purported flaws in the chain of title to the note and deed of trust. As noted, the self-described gravamen of the complaint is that defendants have asserted an interest in plaintiff's loan that they do not in fact own, because of the purportedly faulty chain of title. Each of the individual causes of action repeats—from various perspectives, depending on the type of claim—the same point regarding defendant's lack of ownership interest in plaintiff's loan.

Nevertheless, plaintiff has not attempted in her briefing, either in this appeal or before the trial court, to grapple with the great weight of California authority, holding that a borrower has no standing to bring claims based on purported defects in the chain of title

of their mortgage absent a showing of prejudice.[2] (See, e.g., *Siliga v. Mortgage Electronic Registration Systems, Inc.* (2013) 219 Cal.App.4th 75, 85-86.) And prejudice rarely, if ever, can be shown in such cases, because the borrower's obligations under the promissory note remain unchanged, regardless of who holds the present beneficial interest. (See *Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 515 (*Jenkins*) [finding that, even assuming transfers of promissory note were invalid, the borrower is not the "victim" because her obligations remained unchanged].) Although this case law generally arises in the foreclosure context, its reasoning is equally applicable here, where plaintiff attempts to bring similar claims based on purportedly invalid assignments, despite the alleged lack of any default or pending foreclosure proceedings.

In short, each of plaintiff's asserted causes of action fails for lack of standing, and defendants' demurrer was properly sustained without leave to amend on that basis alone.[3]

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[2] The one exception is *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079 (*Glaski*). In that case, the court determined that the borrower had standing to attack a void assignment to which it was not a party. (*Id.* at p. 1095.) Our view, however, is that *Glaski* was wrongly decided. The California Supreme Court has granted review of several cases in which the court of appeal declined to follow *Glaski*—the lead case is *Yvanova v. New Century Mortgage Corp.* (2014) 226 Cal.App.4th 495, review granted August 27, 2014, S218973. Unless and until the Supreme Court requires us to do otherwise, however, we will follow what we view to be the better reasoned authority of cases that reject *Glaski*.

[3] The first amended complaint suffers from a variety of other failings. For example, it is doubtful plaintiff adequately pleaded actual damages—a required element of many of her claims—given that she specifically alleges she is not in default and is not in foreclosure. We decline to discuss further these additional flaws in plaintiff's pleadings, however, because it is unnecessary to the disposition of this appeal.

2. Leave to Amend Was Properly Denied.

In plaintiff's briefing on appeal, she makes no attempt to identify new, specific facts that she is prepared to allege that would cure the defects in the complaint. She states that "an amendment could provide" any "necessary allegation(s)" but makes no attempt to add any detail to this conclusory assertion. As such, she has not met her burden to show a reasonable possibility that the defects in the first amended complaint could be cured by amendment. (See *Bank of America*, *supra*, 204 Cal.App.4th at p. 1204.) Indeed, we can conceive of no amendment that would cure the defects in the first amended complaint we discuss above (or others that we decline to discuss). Under these circumstances, the trial court did not abuse its discretion in sustaining defendants' demurrer without leave to amend.

III. DISPOSITION

The order appealed from is affirmed. Defendants are awarded their costs on appeal.

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HOLLENHORST
Acting P. J.

We concur:

MCKINSTER
J.

MILLER
J.